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Before the
Federal Communications Commission
Washington, D.C. 20554

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In re Applications of)	MM Docket No. 88-577
)	
LIBERTY PRODUCTIONS,)	File No. BPH-870831MI
A LIMITED PARTNERSHIP)	
)	
Et. Al.)	
)	
For Construction Permit for		
New FM Channel 243A		
Biltmore Forest, North Carolina		

To: The Commission

OPPOSITION TO SECOND MOTION TO ENLARGE ISSUES

Liberty Productions, a Limited Partnership ("Liberty") by counsel herewith submits its opposition to the Second Motion to Enlarge Issues filed by Willsyr Communications, Limited Partnership ("Willsyr") on December 13, 1999 in the above referenced proceeding. In support whereof the following is shown:

1. Willsyr contends that its Motion is timely pursuant to 47 CFR 1.229(b)(3), providing for the submission of requests for enlargement of issues within 15 days of the discovery of new evidence. As will be demonstrated, Willsyr's contention is erroneous. Pursuant to 47 CFR 1.229(d), motions to enlarge issues are required to be premised upon factual allegations, supported by the statement of one having personal knowledge of the facts. Willsyr's Motion is not so supported. In the absence of such support, the Commission may consider only those matters raised by Willsyr with respect to which it properly may take official

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notice.

2. 47 CFR 1.229(b)(3) requires that motions to enlarge premised upon newly discovered evidence be submitted within 15 days of the discovery of such evidence. Willsyr's Motion is not timely filed pursuant to 47 CFR 1.229(b)(3). Willsyr's current Motion is predicated upon Liberty's representation that the equity contribution of its limited partner, David Murray, equals less than 33% of Liberty's total equity, plus debt. That fact was the subject of a certification to Liberty's November 10, 1999 Amendment to its above referenced Application. That Willsyr discovered such facts on the basis of the Amendment is irrefutable, as it has already filed one motion to enlarge based upon "matters contained in" the same Amendment. Accordingly, its Motion is untimely and should be dismissed without consideration on the merits. 1/

3. Willsyr's contention (at page 1) that Liberty's Limited Partner "paid less than \$ 36,000 in capital contributions or loans" ignores Liberty's certification that Murray is not a creditor of the partnership and, thus, has made no loans.

4. Willsyr lists (at page 1) various undertakings by Liberty since 1990. Not all of these are accurate. For example while Liberty participated in the interim operation, it did so as one of four applicants and, thus, incurred only 1/4th of the costs of that operation.

1. Willsyr's Motion is also untimely pursuant to 47 CFR 1.229(a).

5. Willsyr also claims (at page 1) that Liberty assumed "some \$ 2 million in debt". It provides no evidence for this claim. Furthermore, Liberty it is only obligated to pay a total of \$ 1,518,400.00 for the Biltmore Forest construction permit. See: Public Notice (DA 99-2153), released October 12, 1999, Attachment B, page 6. To date only approximately \$ 303,680.00 has been paid. Accordingly, Willsyr has failed to show that Liberty is currently indebted with respect to more than the \$ 303,680.00 it has actually borrowed from Cumulus to date.

6. Willsyr claim (at page 2) that Liberty's "activities" since 1990 "would have cost hundreds of thousands of dollars in legal fees alone" is entirely speculative and unsupported.

7. Willsry's claim (at page 2) that "the primary purpose of a limited partner in an FCC proceeding is to provide funding", ignores the fact that the rights and liabilities of a limited partner are governed by the limited partnership agreement and applicable law.

8. While Willsyr is correct in noting (at page 2) that a limited partner "has a right to be informed", Willsyr's unstated premise is entirely speculative, namely, that such information has been requested by the Limited Partner, but not provided. Liberty's representation that there have been no communications between its General and Limited Partners since 1990 clearly suggests that Willsyr's premise is equally erroneous.

9. Willsry's contention (at page 2) that Liberty has assumed some \$ 2,000,000.00 in debt, is unsupported, as discussed

above. But even if Willsyr's claim were true, what of it? Liberty's General Partner has the sole authority to determine whether and when the partnership borrows funds.

10. Willsry is correct (at page 2) that the proceeds of the loan Liberty obtained from Cumulus had the effect of reducing the percentage of Liberty's total equity, plus debt, represented by the the Limited Partner's equity investment. However, it must be emphasized that Liberty has made clear that the Limited Partner's equity contribution equalled less 33% of its total equity, plus debt prior to the submission of Liberty's short form application, and, thus, prior to the date that it entered into the Loan Agreement with Cumulus. See: Declaration of Valerie Klemmer Watts, dated November 24, 1999 (appended to Liberty's Opposition to Motion to Enlarge Issues, filed November 26, 1999).

11. While Willsyr characterizes (at page 2) the lack of communication between Liberty's General and Limited Partners as "curious", it ignores the restrictions on such communication contained in the partnership agreement. Furthermore, it would not be not particularly unusual for a Limited Partner that had failed to pay its share of expenses also fail to make requests for information about activities which it was not funding, as Willsyr also speculates has occurred, here. While the Commission has a legitimate concern because of its ownership attribution rules with limited partners who take an active role in partnership affairs, Willsry suggests the Commission should here be concerned about a limited partner which Willsyr deems unduly passive.

12. Contrary to Willsyr's contentions (at page 2), it has not raised a substantial and material question regarding anything other than its motive in filing what appears to be an entirely frivolous motion to enlarge.

13. It is long and well established that substantial evidence of intentional deception is prerequisite to a showing of misrepresentation. Willsyr has offered no such evidence, much less substantial evidence. Willsyr's Motion does not even purport to suggest any motive for Liberty to misrepresent its ownership structure. In light of the fact that its Limited Partner owns a broadcast station it would be in Liberty's interest to report the type of change which Willsyr speculates has occurred. Accordingly, its request for a misrepresentation issue is unsupported and frivolous.

14. In summary, Willsyr's Motion is untimely and must be dismissed on that basis alone. It likewise is not supported in the manner required by 47 CFR 1.229(d). The contentions Willsyr raises are without merit and unsupported by any evidence whatsoever. Nor may Willsyr be permitted to cure these deficiencies by means of a responsive pleading. Willsyr's Motion is utterly frivolous in nature and should be dismissed without consideration.

WHEREFORE, premises considered, the Second Motion to Enlarge

Issues, filed by Willsyr should be DISMISSED OR DENIED.

Respectfully Submitted

LIBERTY PRODUCTIONS,
A LIMITED PARTNERSHIP

By:



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December 23, 1999

CERTIFICATE OF SERVICE

I, Timothy K. Brady, hereby certify that I have this 23rd
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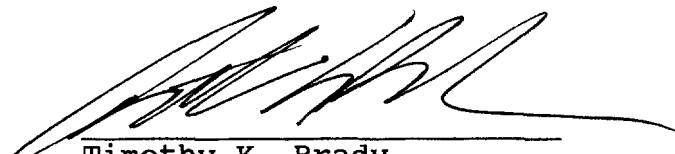
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